



CITY OF COLLEGE PARK ADVISORY PLANNING COMMISSION
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ADVISORY PLANNING COMMISSION

Approved Minutes of Meeting

February 6, 2014 – 7:30 P.M.

City Hall Council Chambers

<u>Members</u>	<u>Present</u>	<u>Absent</u>
Mary Cook, Chair	<u> x </u>	<u> </u>
Clay Gump, Vice-Chair	<u> x </u>	<u> </u>
Lawrence Bleau	<u> x </u>	<u> </u>
James McFadden	<u> </u>	<u> x </u>
Rose Greene Colby	<u> x </u>	<u> </u>
Christopher Gill	<u> x </u>	<u> </u>

Charles Smolka – Resigned as of January 31, 2014

Also Present: Planning Staff- Terry Schum, Miriam Bader and Theresheia Williams; Public Services Staff: Jeannie Ripley and Gilberto Cabrera; Attorney – Sue Ford.

I. Call to Order: Mary Cook called the meeting to order at 7:40 p.m.

II. Approval of Minutes:

Lawrence Bleau moved to accept the minutes of December 5, 2013. Clay Gump seconded. The motion carried 5-0-0.

III. Amendments to Agenda: Mary Cook informed commissioners that the appellant for agenda item 14-0048, Sam Bronstein, contacted her and indicated that he would not be able to attend the meeting because he was ill and requested that his case be postponed until the next meeting. Clay Gump moved to postpone Appeal 14-0048 until the March 6, 2014 meeting. Christopher Gill seconded. Motion carried 5-0-0. Commissioners voted unanimously to remove the item from the agenda.

IV. Public Remarks on Non-Agenda Items: There were no Public Remarks on Non-Agenda Items.

V. Public Hearings:

CNU-2013-03:	Certification of Nonconforming Use to Allow a Multi-family Apartment Building to Continue
<u>Applicant:</u>	University Gardens Apartment
<u>Location:</u>	4620, 4622, 4624 and 4626 Knox Road

Mary Cook explained the hearing procedures and placed witnesses under oath. Miriam Bader summarized the staff report. The applicant is requesting Certification of Nonconforming Use in the R-18 zone for a 41-unit apartment complex. The subject site, known as University Gardens, contains a 41-unit apartment complex and is located at the northeast corner of Knox Road and Rhode Island Avenue.

The buildings were constructed in 1947. The property consists of four lots (4620, 4622, 4624 and 4626) with two garden-style buildings: one 3-story building and one 4-story building, that together form a complex centered on a courtyard. The current development is nonconforming due to exceeding density, bedroom percentages, lot coverage, green area, setbacks and minimum distance between buildings. In 1947, when the buildings were constructed, the minimum lot area per dwelling unit was 625 square feet per unit. The buildings conformed to this regulation when they were built. On November 29, 1949, the Zoning Ordinance was amended changing the minimum lot area per dwelling unit from 625 square feet per dwelling unit to 1,800 square feet per dwelling unit. With this amendment, only 20 units would have been permitted. The minimum density was amended again on May 6, 1975, from 1,800 square feet per dwelling unit to 12 dwelling units per acre. A valid Use and Occupancy permit issued prior to the date of nonconformance was not submitted.

Certification of a nonconforming use requires the following findings be made. First, the use must either pre-date the pertinent zoning regulations and been established in accordance with all regulations in effect at the time the use began; or, the use was established after the requirement was adopted and the District Council issued the permit in error. Second, there must be no break in operation for more than 180 days since the use became nonconforming. The applicant submitted the following documents to establish that there was no break in operation:

- 1) City of College Park Annual Residential Occupancy Permits, Rental Unit License and Inspection Reports from 1967 to 2006 for 4624 and 4626 Knox Road and Annual Occupancy Permits from 1967 to 2008 including an inspection report in 2010 for 4620 and 4622 Knox Road.
- 2) A letter from the Washington Suburban Sanitary Commission (WSSC) that list the activation date for the property as of January 1, 1948.
- 3) An affidavit from Rick Smith, co-owner and President of J.E. Smith Corporation, attesting that his property has been in his family since his grandfather bought the property in 1945 and built the apartment buildings on it in 1946. Mr. Smith also verifies that the property has been in continuous use and operations since 1946.
- 4) Permit review comments from M-NCPPC that identified corrections to be made to the site plan.

The site plan indicates that the development has encroached into the Rhode Island Avenue right-of-way (ROW). A four-foot high chain link fence, approximately 31 cement bollards, a parking sign that restricts parking to University Gardens residents and 20 parking spaces are located in the right-of-way. The applicant has since removed the chain-link fence. The City has not previously authorized this use of right-of-way. The applicant has indicated that these parking spaces, which are not required for certification of the non-conforming use, are useful to them and they prefer to keep and maintain these spaces for use by their residents. The staff supports this continued use of the parking spaces to reduce the impact on parking in the neighborhood. The use of City right-of-way by a private party can only be granted by the Council through a separate agreement, and is not part of the certification that can be recommended by the APC.

Staff concludes that the subject buildings were legally established in 1947 as an apartment building complex according to the regulations in effect at the time. There is also a preponderance of evidence to show that the use has operated continuously. Staff recommends that the Certification of Nonconforming Use be approved and that a new Use and Occupancy Permit be issued to the owner subject to the following conditions:

- 1) The applicant shall remove all bollards, fence post remnants and the remaining section of the chain-link fence perpendicular to the dumpster in the ROW.
- 2) The applicant shall remove the sign that restricts parking to University Gardens and all asphalt and other parking surface in the ROW
- 3) Revise site plan to include “parking spaces shown are exempt from current number of parking spaces and design standards per Section 27-584 of the Zoning Ordinance; and correct the note regarding parking spaces “total spaces provided” from 40 to 20 spaces.

Miriam Bader submitted the staff report, Exhibits 1- 5 and the PowerPoint presentation into the record. Commissioners accepted unanimously.

Mary Cook asked if a Use and Occupancy permit was ever applied for?

Miriam Bader stated that one could not be located. It was back in 1946.

VaLiesha Brown, attorney representing the applicant, stated that they support staff’s recommendation and agree with it fully. She stated that they submitted a Public Information Request through Prince George’s County, but they were unable to locate the permit.

Christopher Gill asked if there was a date when the encroachment changed? Was it in conformance when the apartment buildings were built?

VaLiesha Brown stated that they did look into what came first, the parking lots or the right-of-way. The title search did not give them an answer that said definitively that the right-of-way did not exist when the apartment opened.

Clay Gump asked if the encroachment was measured correctly?

Miriam Bader stated yes, it was measured from the correct place. The site plan submitted shows the right-of-way encroachment. When the permit was granted, they did not check parking. They never reviewed parking in 1947, they just looked at the building and setbacks.

Clay Gump asked if the applicant is planning to pursue an agreement with the City to allow the parking lot to continue.

VaLiesha Brown stated that they have discussed it, but a decision has not been made as of yet.

Commissioners reviewed the evidence and testimony submitted and determined that:

- 1) A Nonconforming Use Site Plan was submitted that indicates that the apartment complex was legally established in accordance with all regulations in effect at the time construction began in 1947.
- 2) Based on a preponderance of the documentary evidence submitted including City of College Park occupancy permits, Washington Suburban Sanitary Commission records and an affidavit, the apartment complex at 4620-4626 Knox Road has been continuously operated as a 41-dwelling unit apartment complex and there has been no break in operation for more than 180 days since the use became nonconforming. Further, the APC recommends that a new Use and Occupancy Permit be issued to the current owner.

Lawrence Bleau moved to approve the Certification of Nonconforming Use for CNU-2013-03 based on staff's recommendation and conditions and recommends certification of the use as nonconforming and not illegal. Christopher Gill seconded. Motion carried 5-0-0.

CEO-2014-01: Variance to Construct Fence in Front Yard
Applicant: Jose & Gloria Medina
Location: 9801 51st Avenue

Mary Cook explained the hearing procedures and placed witnesses under oath. Miriam Bader summarized the staff report. The applicant is requesting two variances to install a 6-foot high, "L" shaped, stockade fence in the side yard of a corner lot for safety to prevent his grandchildren, whom he watches, from running out into the street. The first variance is for height to replace a 3.0-foot high fence with a 6-foot high fence and the second variance is for setback from the minimum 25-foot fence setback from the property line to allow a zero setback from the property line. The property is a corner lot and is located at the northeast corner of 51st Avenue and Mangum Road. The legal front is 51st Avenue. The area of the property is 6,076 square feet. The front property line measures 50 feet and the rear property line measures 60 feet. The side northern property line measures 100 feet and the side southern property line measures 85 feet.

The property is improved with a one-story single-family home. The property has an existing 3-foot high chain-link fence along the front yard, southern side yard and part of the northern side yard and a brick fence along the rear property line and part of the northern side yard.

The applicant installed a 6-foot high, stockade fence running perpendicular to Mangum Road and parallel to 51st Avenue without a permit. A stop work order was posted on December 5, 2013. The applicant applied for a County fence permit on December 12, 2013 but was referred to the City for a variance.

The City Fence Ordinance, Chapter 87, Section 23, paragraph F, Existing fences does not prohibit the reconstruction or replacement with, the same dimensions and placement, of any fence or wall legally existing before the effective date of this section, or for which a variance has been granted; provided, however, that no such reconstructed or replaced fence or wall shall exceed four feet in height in the front yard. Replacement fences may be reconstructed of similar materials, or materials such as wrought iron, split rail, or picket, incorporating openness and visibility.

Chain link may not be used for reconstruction unless it was the original material or a variance is obtained.

Miriam Bader submitted the staff report, Exhibits 1- 9 and the PowerPoint presentation into the record. Commissioners accepted unanimously.

Clay Gump asked if the chain-link fence is required to be 25-feet back from the side yard?

Miriam Bader stated no, as long as it was existing before 2007.

Terry Schum stated that it should be noted that staff is recommending denial for the height variance, so the fence is going to have to be removed if APC agrees with staff recommendation. The fence should also be relocated either forward or back.

Mary Cook asked to explain why the fence needs to be moved either forward or back?

Terry Schum stated that it doesn't need to be, but it is staff's recommendation that it would be a better aesthetic improvement.

Christopher Gill asked if there is an egress concern with the fence located under a window?

Terry Schum stated no because there is a front and rear door.

Mary Cook asked Miriam to repeat what the Zoning Ordinance states about replacement fences?

Miriam Bader stated that it states that "the reconstruction or replacement has to be of the same dimensions and placement of any fence or wall legally existing before the effective date of the ordinance, which was 2007 or for which a variance has been granted. Replacement fences may be reconstructed of similar materials, or materials such as wrought iron, split rail, or picket, incorporating openness and visibility."

Clay Gump asked if that is general for all fences, even if they don't require a variance?

Sue Ford, attorney, stated that the statement is from the variance section of the Zoning Ordinance, but there are two sections within the fence code that deal with construction. Section 87-23(H) Prohibited materials, which states "In no event shall a fence be constructed of barbed wire, electrically charged material, or other hazardous material" and Section 87-23(I) Fence construction, which states "Fence construction, where practicable, fences shall be built with the finished side facing outwards."

Desiree Hernandez, applicant's daughter, stated that Mr. Medina would like to keep the stockade fence as it is. She stated that there are other fences in the neighborhood that are similar to his fence.

Sue Ford stated that if the applicant questions the criteria, and wants to bring in pictures to show other similar fences and thinks it would be relevant to the commission, he could request a continuance and come back next month and bring photographs and present additional evidence.

Desiree Hernandez asked if the fence was cut down to 4-feet could it stay in the same location?

Lawrence Bleau stated that if it were cut down to 4-feet, they would not need a variance for height, but it is still in the side yard of the property and a variance is needed for the fence to be located there unless it is setback 25-feet from the sidewalk.

Desiree Hernandez asked how open does the fence have to be?

Lawrence Bleau stated at least 50% openness, like a picket or wrought iron fence. Stockade is not open at all.

Desiree Hernandez asked if they take the fence down to 4-feet and make it open 2 inches or so, would that be in compliance?

Clay Gump stated that with the existing stockade fence, if every other board was removed, that would show openness.

Commissioners reviewed the evidence and testimony submitted and determined that:

- 1) The Property has an exceptional or extraordinary situation.
 - A. Height Variance. There is no exceptional or extraordinary condition to support the 2-foot variance to permit a 6-foot high fence.
 - B. Setback Variance. The main segment of fence is a replacement fence which is permitted at the existing location at the property line. As for the smaller segment of fence, perpendicular to Mangum Road, the property is a corner side street lot with an unusually large side yard. This is an extraordinary condition that makes visibility of the entire yard more difficult particularly while supervising children.
- 2) The denial of the variance would result in a peculiar and unusual practical difficulty to, or exceptional or undue hardship to the property owner.
 - A. Height Variance. There is no peculiar or unusual practical difficulty to support the 2-foot variance to permit a 6-foot high fence. A lower, 4-foot high fence should reasonably serve the stated purpose of protecting children from running into the street.
 - B. Setback Variance. The main segment of fence is a replacement fence which is permitted at the existing location at the property line. As for the smaller segment of fence, perpendicular to Mangum Road, the property is a corner side street lot with an unusually large side yard. Denial of the variance would result in an unusual practical difficulty in that it would make monitoring children at play particularly difficult.

- 3) Granting the variance will impair the intent, purpose or integrity of the Fence Ordinance.
 - A. Height Variance. Granting the variance will adversely impact the intent, purpose and integrity of the City's Fence Ordinance. The Fence Ordinance was enacted to preserve and protect the character of residential neighborhoods in the City. The requested height variance is not the minimum necessary.
 - B. Setback Variance. The main segment of fence is a replacement fence which is permitted at the existing location at the property line. As for the smaller segment of fence, this segment will have less of a setback impact due to its location perpendicular to Mangum Road.
- 4) The variance is consistent with the design guidelines adopted for the historic district, if applicable. Not applicable, the property is not located in an historic district.
- 5) The variance will adversely affect the public health, safety, welfare or comfort.
 - A. Height Variance. Granting the variance will adversely affect the public safety and comfort by limiting visibility for pedestrians and motorists travelling down Mangum Road. A lower and more open fence would help lessen this effect.
 - B. Setback Variance. The main segment of fence is permitted at the existing location at the property line. As for the smaller segment of fence, granting the setback variance for this segment of fence will not adversely affect the public health, safety, welfare and comfort, if a shorter (four-feet high), and more open fence is installed.
- 6) The fence for which an appeal is requested incorporates openness and visibility as much as is practicable, provided however, that it shall not be constructed of chain link unless this material is consistent with the surrounding neighborhood.

The proposed fence, a 6-foot high solid, wood, stockade fence does not incorporate openness and visibility, as much as practical.
- 7) The proposed construction, including setbacks, is characteristic of and consistent with the surrounding neighborhood. In neighborhoods where chain link is a characteristic material, alternate materials incorporating openness and visibility, may be permitted.
 - A. Height Variance. The proposed 6-foot high stockade fence is not characteristic of the surrounding neighborhood. Most fences in the surrounding neighborhood are 3'-4' high chain link.

- B. **Setback Variance.** Most of the fences in the surrounding neighborhood are located on the property line. The longer segment of the L-shaped fence is a replacement of an existing chain link fence located on the property line. The smaller segment does not meet the characteristic setback; however, it is necessary in order to close off the backyard activity area from the rest of the lot to effectively monitor children at play.

Christopher Gill moved to approve the variance of 25 feet to permit construction of a new fence in the side yard and a 1-foot variance for reconstruction of the existing fence to a height of 4-feet, subject to the condition that the fence be reconstructed or modified using materials incorporating openness and visibility. Clay Gump seconded.

Christopher Gill moved to amend the motion to include that as a corner side lot with an unusually large side lot, there are extraordinary conditions that make visibility and use of the property more difficult than a standard lot and the applicant would be unable to monitor children in a large side yard. Clay Gump seconded. Motion carried 5-0-0.

14-0048: Appeal for Failure to Secure City and County building permits for a carport/shed

Applicant: Sam Bronstein

Location: 9026 Autoville Drive

The applicant contacted APC Chair, Mary Cook, and informed her that he would be unable to attend the meeting because he was ill and requested that it be postponed until the March 6, 2014 meeting. Commissioners voted unanimously to postpone the meeting until the March 6, 2014 APC meeting.

VI. Update on Development Activity: Terry Schum reported on the following.

Koons Ford – The developers will be filing their Detailed Site Plan for an apartment building with market rate housing on the Berwyn House Road site.

University of Maryland Conference Hotel – Located on Rt. 1 across from the University of Maryland visitor center. The proposed site will consist of a three-acre interior site, which will be accessible to campus and closer to downtown College Park. The University of Maryland is selling it to the University of Maryland Foundation and they will ground lease it to a private sector developer.

Prince George's County General Plan – On February 6, 2014, the Planning Board adopted the Prince George's County General Plan 2035. A Public Hearing was held and there were a lot of comments submitted. Staff reviewed and reacted to the comments and through a series of Planning Board worksessions made amendments to the document. The amended document will be sent to the County Council and will probably be approved in the next month or two.

College Park-Riverdale Park Transit Development – Community workshops are completed and there will be a draft plan out in May.

VII. Election of Chair and Vice-Chair:

Lawrence Bleau moved to re-elect Mary Cook as Chair and Clay Gump as Vice-Chair. Christopher Gill seconded. Motion carried 5-0-0.

VIII. Other Business: Terry Schum reported on the following:

In the next month, the City Council will be making a decision on whether to work with State Highway to underground the utilities on Rt. 1 in conjunction with the reconstruction project. The decision is under consideration and will be discussed at future worksessions.

IX. Adjourn: There being no further business, the meeting was adjourned at 9:30 p.m.

Minutes prepared by Theresheia Williams